

REMARKS/ARGUMENTS

Claims 1-32, 45 and 47-58 are currently pending in the application. Claims 33-44 and 59-63 have been withdrawn with traverse from consideration in response to a restriction requirement. Claims 1-32, 45, 47-58 were rejected in the Office Action mailed January 5, 2009 (hereinafter referred to as "Office Action").

Applicant requests a three-month extension of time to extend the response due date from April 5, 2009 to July 5, 2009. A credit card authorization is being submitted herewith to pay the required fees. If any additional fees are necessary the Commissioner is hereby authorized to charge any fees or credit any overpayments to Chalker Flores, LLP's Deposit Account No. 50-4863.

In view of the following remarks and amendments, applicant respectfully requests a timely Notice of Allowance be issued in this case.

Response to Arguments

The Office Action indicated that "there is no difference between awarding a player based on the subsequent game play activity or based on subsequent players purchasing game play." (page 12, lines 14-15). Applicant respectfully disagrees because: (a) the stated purpose of Packes is to increase the duration of the player's gaming sessions (col. 2, lines 17-19, 29-31; col. 3, lines 32-36; col. 9, line 59-col. 10, line 6); (b) the bonus in Packes is based on the performance or winnings of a subsequent player only if the current user is still playing (col. 3, lines 32-36, 58-67; col. 5, lines 65-67); and (c) claims 1-32, 45 and 47-58 are not dependant of the duration of the player's gaming session, the performance of subsequent players or the play of the current user. If fact, claims 1-32, 45 and 47-58 do not require the current user play at all; the current user only has to purchase an account having a play value. For at least these reasons, applicant respectfully submits substantial differences exist between Packes and the claimed invention recited in claims 1-32, 45 and 47-58.

The Office Action indicated that the following portion of Packes provides "that the game play and reward can be based on sales price received from subsequent purchases" (page 12, line19-page 13, line 16):

Referring now to FIG. 10, there is illustrated a method 1000 for determining bonuses based on the activity of subsequent gaming sessions. Generally, each player is eligible to receive bonuses based on the results of the gaming sessions initiated after that player, in much the same way that a multi-level marketing arrangement rewards participants with a commission based on sales of all subsequent sales people hired by the original participant. The more subsequent salespeople that are hired, the higher the potential commissions for the original hiring salesperson. In

much the same way, the present invention encourages players to continue a given gaming session in that the longer the session continues, the more likely it is that other subsequent gaming sessions will be initiated. In one embodiment, each jackpot won by a player of a subsequent gaming session results in a bonus monetary payout for the first player, as described more fully below.

Applicant respectfully submits that the Packes device is not based on a sales price because the “bonuses are based on the activity of subsequent gaming sessions.” The cited portion of Packes states that generally “a multi-level marketing rewards participants with a commission based on sales of all subsequent sales people hired by the original participant.” But, Packes does not operate in this manner. Claims 1-32, 45 and 47-58 do not operate in this manner or the manner of Packes. There is no relationship between the current user and the subsequent purchasers – the purchasers are unaware of one another and have no interaction with one another. The current user does not recruit the subsequent purchasers. The current user’s play is not related to the subsequent purchaser’s play. Applicant respectfully submits that Packes and the general mention of multi-level marketing in Packes do not disclose, teach or suggest a wagering system as recited in claims 1-32, 45 and 47-58 that does not require a relationship between the uses and is based on: (a) a sales price; (b) a specified number of previous users; and (c) a payout formula.

Claim Rejection under 35 U.S.C. § 101

The Office Action rejected claim 45 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicant respectfully submits that certain portions of the Office Action do not appear to apply to claim 45: “a method of solving inverse problems” (page 2, lines 19-21); and “solving inverse problems” (page 2, line 23-page 3, line 4).

Claim 45 has been amended to recite that: (a) the method is computerized; (b) the accounts are stored on a computer; (c) the accumulating play value and formula are calculated by the computer; and (d) the gaming device is communicably coupled to the computer. As a result, applicant respectfully submits that the method is not directed to abstract ideas, laws of nature or natural phenomenon. Moreover the method is tied to a computer. Finally, “using the accumulated play value by the current user in a gaming machine” provides a tangible result. Accordingly, applicant respectfully submits that claim 45 recites statutory subject matter and is, therefore, allowable under 35 U.S.C. § 101. Applicant respectfully requests reconsideration and withdrawal of the rejection.

Claim Rejections under 35 U.S.C. § 103(a)

Claims 1-3, 6-18, 21-32, 45 and 47-58 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Packes, Jr., et al. (U.S. Patent No. 6,319,122) in view of Oram, et al. U.S. Patent Publication No. 2004/0063494). Claims 4-5 and 19-20 were rejected

under 35 U.S.C. § 103(a) as being unpatentable over Packes in view of Arganbright, et al. (U.S. Patent No. 6,980,962). Claims 1, 18, 32 and 45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Paasche, et al. (U.S. Patent No. 7,359,871). Applicant respectfully submits that claims 1-3, 6-18, 21-32, 45 and 47-58, as amended, are patentable over the cited references for at least the reasons described below.

Claims 1, 18, 32 and 45

In addition to the reasons stated above in the Response to Arguments section, applicant respectfully submits that the cited references do not disclose, teach or suggested all of the elements recited in claims 1, 18, 32 and 45 for at least the following reasons.

First, applicant respectfully submits that the cited references do not disclose, teach or suggest the following elements recited in claim 1, 18, 32 and 45, as amended: (a) assigning a multi-level wagering account having a play value initially equal to or slightly less than equal to the sales price to the current user; and (b) distributing the entire sales price received from the current user to a specified number of previous users and an operator of the system in accordance with a payout formula, which is not based on a play of any user. As acknowledged by the Office Action, Packes provides payouts based on the activity of other players. (page 5, lines 19-20). Although Packes generally mentions that “multi-level marketing arrangement rewards participants with a commission based on sales of all subsequent sales people hired by the original participant,” Packes does not use this methodology because the stated purpose of Packes is to increase the duration of the player’s gaming sessions (col. 2, lines 17-19, 29-31; col. 3, lines 32-36; col. 9, line 59-col. 10, line 6). Applicant respectfully submits that the multi-level marketing arrangement generally mentioned by Packes merely pays “a commission based on the sales,” which is not the same or even close to “distributing the entire sales price received by the current user” as recited in claims 1, 18, 32 and 45, as amended. Moreover, the multi-level marketing arrangement generally mentioned by Packes does not also “assign[] a multi-level wagering account having a play value initially equal to or slightly less than equal to the sales price to the current user” as recited in claims 1, 18, 32 and 45. As a result, Packes and the multi-level marketing arrangement generally mentioned by Packes do not disclose, teach or suggest all the recited in claim 1, 18, 32 and 45, as amended.

Second, Packes and the multi-level marketing arrangement generally mentioned by Packes require a relationship between the current user and the subsequent users. The bonus in Packes is based on the performance or winnings of a subsequent player only if the current user is still playing (col. 3, lines 32-36, 58-67; col. 5, lines 65-67), so both the current user and the subsequent users have to be playing at the same time. The multi-level marketing arrangement generally mentioned by Packes requires that the “commission [is] based on sales of all subsequent sales people hired by the original participant.” Claims 1-32, 45 and 47-58, as amended, are not dependant of the duration of the player’s gaming session, the performance of subsequent players or the play of the current user. If fact, claims 1-32, 45 and 47-58 do not require the current user play at all;

the current user only has to purchase an account having a play value. There is no relationship between the current user and the subsequent purchasers – the purchasers are unaware of one another and have no interaction with one another. The current user does not recruit the subsequent purchasers. As a result, Packes and the multi-level marketing arrangement generally mentioned by Packes do not disclose, teach or suggest all the recited in claim 1, 18, 32 and 45, as amended.

Third, applicant respectfully submits that modifying Packes or the multi-level marketing arrangement generally mentioned by Packes to (a) assign a multi-level wagering account having a play value initially equal to or slightly less than equal to the sales price to the current user; and (b) distribute the entire sales price received from the current user to a specified number of previous users and an operator of the system in accordance with a payout formula, which is not based on a play of any user would change their principle of operation because: (1) Packes requires the concurrent play of others and is not based on a sales price; (2) the multi-level marketing arrangement generally mentioned by Packes only pays a commission of the sales price and does not: (i) distribute the entire amount, and (ii) at the same time assign an account initially equal to or slightly less than equal to the sales price to the current user. MPEP Section 2143.01 (VI) states “[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious.” As a result, applicant respectfully submits that it would not be obvious to one skilled in the art to change Packes or the multi-level marketing arrangement generally mentioned by Packes to incorporate all the elements recited in claims 1, 18, 23 and 45, as amended.

Finally, applicant respectfully submits that Oram, Arganbright and Paasche, either alone or in combination, due not cure the stated deficiencies of Packes. For example, Paasche only pays “bonuses or commissions based on the purchases of those members.” (Abstract; see also col. 30, line 30-col. 31, line 15). Paasche does not disclose, teach or suggest (a) assigning a multi-level wagering account having a play value initially equal to or slightly less than equal to the sales price to the current user; and (b) distributing the entire sales price received from the current user to a specified number of previous users and an operator of the system in accordance with a payout formula, which is not based on a play of any user.

For at least the reasons stated above, applicant respectfully submits that Packes and the other cited references, either alone or in combination, do not disclose, teach or suggest every element recited in claims 1, 18, 23 and 45, as amended. Accordingly, applicant respectfully submits that claims 1, 18, 23 and 45, as amended are not obvious over Packes in view of the other cited references and are, therefore, allowable under 35 U.S.C. § 103(a). Applicant respectfully requests that the rejection of claims 1, 18, 23 and 45, as amended be withdrawn.

Claims 2-17, 19-31 and 47-58

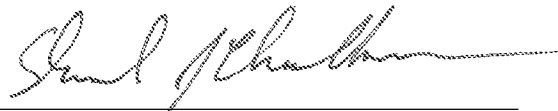
Applicant respectfully submits that claims 2-17, 19-31 and 47-58 ultimately depend from claims 1, 18 and 45, which are allowable for the reasons stated above, and further distinguish over the cited references. Claims 2-17, 19-31 and 47-58 are, therefore, allowable under 35 U.S.C. § 103(a). Accordingly, applicant respectfully requests that the rejection of claims 2-17, 19-31 and 47-58 be withdrawn.

Conclusion

For the reasons set forth above, applicant respectfully requests reconsideration by the examiner and withdrawal of the rejections. Applicant submits that claims 1-32, 45 and 47-58, as amended, are fully patentable. Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If the examiner has any questions or comments, or if further clarification is required, it is requested that the examiner contact the undersigned at the telephone number listed below.

Date: July 5, 2009

Respectfully submitted,
CHALKER FLORES, LLP

By 

Daniel J. Chalker
Reg. No. 40,552
Tel.: (214) 866-0001
Fax: (214) 866-0010

2711 LBJ Frwy, Suite 1036
Dallas, Texas 75234